IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPEAL BRIEF- 37 C.F.R. §1.192

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U.S. Patent Application 09/634,546 entitled,

"A SYSTEM FOR ENHANCING BUYERS PERFORMANCE
IN ELECTRONIC COMMERCE"

Real Party in Interest: International Business Machines Corporation

Related Appeals and Interferences:

None

Status of Claims:

Claims 1, 3-16, 21 and 23-28 are pending.

Claims 1, 7, 9-12, 16, 21 and 26-28 stand rejected under 35 USC 102(e) as being anticipated by

Gershman et al. (USP 6,199,099), hereafter **Gershman.**

Claims 5, 8, 13, 24 and 25 stand rejected under 35 USC 103(a) as being unpatentable over

Gershman.

Claims 3, 4, 14, 15 and 23 stand rejected under 35 USC 103(a) as being unpatentable over

Gershman in view of Webvan (http://web.archive.org/web/*/http://www.webvan.com), hereafter

Webvan.

Claim 6 stands rejected under 35 USC 103(a) as being unpatentable over Gershman in view of

MySimon (http://web.archive.org/web/19981203074304/http://www.mysimon.com/), hereafter

MySimon.

Status of Amendments:

Request for Reconsideration filed 2/2/2004 has been entered.

Summary of the Invention:

The presently claimed invention provides an improved method of surveying prices

located across an e-commerce environment (e.g. goods available in an auction, online catalog, or

electronically connected supply center). The prior art has many systems which go out on the

web and look-up prices and return the prices to the buyer. However, suppose you were a "small

business" and wanted to negotiate the absolute best price from various sources on 50 printers, but

you did not want to reveal your identity for fear of an associated cost mark-up or lower discount.

The present invention allows for you to use sophisticated buyer profiles (previously created over

time and recognized by the seller as such) to get your best quote. In this scenario, the

sophisticated buyer profile may be disguised to look like a very large business to optimize a

volume discount and you and the next buyer and the next buyer could use this large business

profile to continuously get the best prices. The seller only thinks that a large business is

purchasing large quantities of printers, and gives a maximum discount without ever knowing that

in fact the repeated buying history is performed by many smaller businesses. The present invention further will complete the purchase without ever revealing to the seller the true identity of the purchaser.

Another part of the current invention is a method to uncover price structures, for example, to the airfare market. Airlines do not publish their fare structure. They do not make it clear how the fare depends on the time of the day, the day of the week and the date. The buyer tells the desired time of travel and the airline returns a fare. Airline fares are repeatedly probed by the present system for uncovering such structures. It then suggests to the buyers how money can be saved by changing the requested time of the day, day of the week, etc.

Pending Claims (all citations are made from the original specification, including the figures):

1.   A system for enhancing price discovery of products available in electronic commerce, wherein said system comprises:

one or more automated surveyors *(figure 10, 1002, 1004, and 1006; and page 10, lines 6-8)* for surveying a plurality of: posted prices *(figure 4; figure 10, 1002; and page 7, lines 19-22, page 10, lines 6-8)*, bid prices *(figure 1, 106)*, posted quotes *(page 10, line 6-8; and figure 10, 1004)*, quoted prices *(figure 5; figure 10, 1006; and page 8, lines 1-10)*, and auctions *(figure 1, 108)*;

an anonymous buyer profile, said anonymous buyer profile used multiple times to develop historical usage therefore, said historical usage representing a sophisticated buyer *(page 5, lines 11-13; page 6, line 22-page 7, line 3; and page 8, lines 6-8, page 10, lines 13-16)* and included within at least one of said one or more automated surveyors, said sophisticated buyer used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination *(page 10, lines 13-16)*.

3.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said developed anonymous buyer profile is used to make actual purchases for a buyer using said system without disclosing the true identity of said buyer *(page 8, lines 13-16; and figure 6, 602)*.

4.   A system for enhancing price discovery in electronic commerce, as per claim 3, wherein

when said system makes actual purchases for a buyer it further includes: receiving purchased at

least one item at a site owned by system operator or a third party, and

> shipping at least item to said buyer *(figure 7; and page 8, line 19 - page 9, line 4)*.

5.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said surveying posted prices further comprises:

> collecting information about wholesale prices *(figure 3, 302)*;

> generating reference points*(figure 3, 304)*, and

> assessing from said reference points whether a posted price is reasonable *(figure 3, 306)*.

6.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said surveying posted quotes further comprises:

> scanning continuously commercial sites on a network *(figure 4, 402)*;

> extracting posted quotes from said sites *(figure 4, 404)*;

> maintaining a database of posted quotes *(figure 4, 406)*, and

> pointing a buyer to vendors that post a best price based on said posted quotes for an item

the buyer is interested in *(figure 4, 408)*.

7.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said included within at least one of said one or more automated surveyors comprises:

> choosing one of a plurality of available fictitious names *(figure 6, 604)*;

> requesting price quotes on behalf of said chosen fictitious names *(figure 6, 606)*;

> storing all received quotes *(figure 6, 608)*, and

> maintaining statistics about said stored received quotes for reference to future buyers

using said system *(figure 6, 610)*.

8.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said system further comprises:

> promoting competition among sellers by:

> generating messages to inform sellers of lower prices quoted by their competitors *(figure

8, 802)*;

advising said sellers to consider lowering prices *(figure 8, 804)*, and

maintaining a website, for public viewing, regarding ratings of sellers *(figure 8, 806)*.

9.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

potential buyers receive messages of prices discovered by any of: e-mail, regular mail, or faxes

(figure 8, 802).

10.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said method of uncovering price structures further comprises:

probing a commercial site with varying parameters associated with the price of at least

one product *(figure 9, 902)*;

uncovering the underlying fee structure and how it varies with respect to different

parameters *(figure 9, 904)*, and   .

suggesting to a potential buyer what parameters can be changed to save money *(figure 9,

906)*.

11.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said network includes any of the: Internet, WWW, wireless web, LAN or WAN *(page 11, lines

1-7)*.

12.   A method for enhancing buyers performance in electronic commerce, wherein said

method comprises:

electronically presenting information to sellers located across a network about

sophisticated buyers who are not willing to pay more than a minimum price, said sophisticated

buyers developed by historical use of anonymous buyer profiles *(page 5, lines 11-13; page 6,

line 22-page 7, line 3; and page 8, lines 6-8, page 10, lines 13-16)*;

using said sophisticated buyers to electronically gather information about prices on a

network *(page 7, line 13- page 8, line 17)*, and

indicating to sellers when they are competitive, and influencing them to lower prices

(figure 8 and page 6-10).

13.   A method for enhancing buyers performance in electronic commerce, as per claim 12, wherein said influencing them to lower prices comprises any of:

generating messages to inform sellers of lower prices quoted by their competitors *(figure 8, 802)*;

advising said sellers to consider lowering prices *(figure 8, 804)*, and

maintaining a website, for public viewing, regarding ratings of sellers *(figure 8, 806)*.

14.   A method for enhancing buyers performance in electronic commerce, as per claim 12, wherein said sophisticated buyers are used to anonymously make actual purchases for a buyer using said method *(figure 7 and page 8, line 20 – page 9, line 2)*.

15.   A method for enhancing buyers performance in electronic commerce, as per claim 14, wherein when said method anonymously makes actual purchases for a buyer it further includes:

receiving purchased item(s) at a site owned by system operator or a third party, and

shipping item(s) to said buyer *(page 9, lines 3-5)*.

16.   A method for enhancing buyers performance in electronic commerce, according to claim 12, wherein said network includes one of the: Internet, WWW, wireless web, LAN or WAN *(page 11, lines 1-7)*.

21.   A method for enhancing buyers performance in electronic commerce comprising:

surveying quoted prices located across a network, comprising the steps of:

generating fictitious user names *(figure 5, 504; and page 8, lines 2-6)*;

requesting price quotes using said fictitious name(s) *(figure 5, 506; and page 8, lines 2-6)*;

building reputation of said fictitious name(s) as sophisticated buyer(s) *(figure 5, 508; and page 8, lines 6-8)*;

continuously scanning commercial sites on a network using said sophisticated buyers to retrieve product price information, including at least quotes *(figure 5, 502; and page 8, lines 1-2)*;

generating statistical distribution of said quotes *(figure 5, 510; and page 8, lines 8-10)*, and

comparing a quote a known buyer receives to what has been observed in the system by

the sophisticated buyer *(figure 5, 512; and page 8, lines 8-10)*.

23.   A method for enhancing buyers performance in electronic commerce, according to claim

21, wherein said known buyer's anonymity is protected comprises the steps of:

providing buyer the option of purchasing item(s) for him *(figure 7, 702; and page 8, line*

20 - page 9, line 1);

purchasing the item(s) using one of many said available fictitious names *(figure 7, 704;*

and page 9, lines 1-2);

receiving item(s) at a site owned by system operator *(figure 7, 706; and page 8, lines 3-*

4), and

shipping item(s) to buyer *(figure 7, 708; and page 8, lines 3-4)*.

24.   A method for enhancing buyers performance in electronic commerce, according to claim

21, further comprising promoting competition among sellers comprising the steps of:

generating messages to inform sellers of lower prices quoted by their competitors *(figure*

8, 802);

advising said sellers to consider lowering prices *(figure 8, 804)*, and

maintaining a website, for public viewing, regarding ratings of sellers *(figure 8, 806)*.

25.   A method for enhancing buyers performance in electronic commerce, according to claim

24, wherein said messages generated include one of the following: e-mail, regular mail, or faxes

(figure 8, 802).

26.   A method for enhancing buyers performance in electronic commerce, according to claim

21, further comprising a method of uncovering price structures by:

probing a commercial site with varying parameters associated with the price of at least

one product *(figure 9, 902)*;

uncovering the underlying fee structure and how it varies with respect to different

parameters *(figure 9, 904)*, and

suggesting to the buyer what parameters can be changed to save money *(figure 9, 906)*.

27. An article of manufacture comprising a computer user medium having computer readable program code embodied therein which enhances buyers performance in electronic commerce, said system comprising:

computer readable code comprising one or more automated surveyors *(figure 10, 1002, 1004, and 1006; and page 10, lines 6-8)* for surveying any of: posted prices *(figure 4; figure 10, 1002; and page 7, lines 19-22, page 10, lines 6-8)*, bid prices *(figure 1, 106)*, posted quotes *(page 10, line 6-8; and figure 10, 1004)*, quoted prices *(figure 5; figure 10, 1006; and page 8, lines 1-10)*, and auctions *(figure 1, 108)*;

computer readable code comprising an anonymous buyer profile used multiple times to develop historical usage therefore, said historical usage representing a sophisticated buyer *(page 5, lines 11-13; page 6, line 22-page 7, line 3; and page 8, lines 6-8, page 10, lines 13-16)* and included within at least one of said one or more automated surveyors, said sophisticated buyer used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination *(page 10, lines 13-16)*.

28. An article of manufacture comprising a computer user medium having computer readable program code embodied therein which enhances buyers performance in electronic commerce, according to claim 27, wherein code for said automated surveyors using said one or more anonymous buyer profiles further comprises computer code for:

concealing a buyers true identity *(figure 6, 602)*;

picking one of many available fictitious names *(figure 6, 604)*;

requesting price quotes on behalf of a buyer without revealing the buyer's true identity;

storing all received quotes *(figure 6, 606)*, and

maintaining statistics about said stored received quotes for reference of future buyers *(figure 6, 610)*.

ISSUES:

I.   Was proper USPTO procedures followed in recording an Interview Summary with respect to an after final interview? Was proper consideration given to issues raised during the after final interview?

II.   Was a proper rejection made under 35 U.S.C. § 102(e) using existing USPTO guidelines?

III.   Was a proper rejection made under 35 U.S. C. § 103(a) using existing USPTO guidelines?

Grouping of Claims:

All claims stand or fall together (claims 1, 3-16, 21, 23-28).

Argument:

I.   "AFTER FINAL" INTERVIEW

An "After Final" interview was granted and conducted on 1/15/04 between applicant's representative, Ramraj Soundararajan, and the examiner, David Q. Le.   During the interview, applicant's representative provided an overview of the claimed invention and also talked about the art of record (such as the Gershman et al. reference, USP 6,199,099), and the failure of such art to anticipate claims of the applicant's invention. Specifically, at least the following points were made (and are presented in this appeal brief to make the record complete – absent the interview summary):

a.   With respect to applicant's independent claims 1, 21, and 27, applicant's representative argued that the Gershman reference fails to either explicitly or implicitly teach or suggest an "anonymous buyer profile". The examiner, in the final office action dated 12/01/2003, cites "Fig 13; associated text; C32-33: User Persona" for providing such a limitation. Applicant's representative pointed out to the examiner that figure 13 (and the Gershman patent in its entirety) merely taught maintaining profiles and personas for each user and failed to teach maintaining a profile associated with an anonymous buyer. At this point, Applicant's representative respectfully asked the examiner if he was aware of other specific citations in the Gershman patent that provided for such a limitation (as the citations in the final office action failed to provide for the limitation of maintaining an anonymous profile). The examiner responded that he would have to re-read the Gershman patent to be able to see where such a limitation was mentioned.

b.   With respect to applicant's independent claims 1, 21, and 27, applicant's representative argued that the Gershman reference fails to either explicitly or implicitly teach or suggest a "sophisticated buyer". The examiner, in the final office action dated 12/01/2003, cites "Fig 12-14, associated text: C32, L7-C33, L50: User Persona" for providing such a limitation. Again, applicant's representative pointed out to the examiner that figures 12-14 (and the Gershman patent in its entirety) merely taught maintaining profiles and personas for each user and failed to teach a sophisticated buyer based upon an anonymous profile. At this point, Applicant's representative once again respectfully asked the examiner if he was aware of other

specific citations in the Gershman patent that provided for such a limitation (as the citations in the final office action failed to provide for the limitation associated with a sophisticated buyer). The examiner once again responded that he would have to re-read the Gershman patent to be able to see where such a limitation was mentioned.

c.   With respect to applicant's independent claim 21, applicant's representative argued that the Gershman reference fails to either explicitly or implicitly teach or suggest "generating/choosing one of a plurality of available fictitious names". The examiner, in the final office action dated 12/01/2003, cites "Fig 15-16, associated text: C33, L51-C34, L42" for providing such a limitation. Applicant's representative pointed out to the examiner that the above-referenced citations (and the Gershman patent in its entirety) failed to teach generating or choosing fictitious names, as the patent was directed towards maintaining profiles with respect to specific users. At this point, Applicant's representative yet again respectfully asked the examiner if he was aware of other specific citations in the Gershman patent that provided for such a limitation (as the citations in the final office action failed to provide for the limitation associated with generating/choosing fictitious names). The examiner once again responded that he would have to re-read the Gershman patent to be able to see where such a limitation was mentioned.

d.   With respect to applicant's independent claim 12, applicant's representative argued that the Gershman reference fails to either explicitly or implicitly teach or suggest the limitation of "indicating to sellers when they are competitive, and influencing them to lower prices". The examiner, in the final office action dated 12/01/2003, cites "C57, L4-7: Negotiation Offers" for providing such a limitation. Applicant's representative pointed out to the examiner that the above-referenced citations (and the Gershman patent in its entirety) merely provided for a possibility to "negotiate prices and service options with retailers", a limitation that is completely different from the limitation of claim 12 which requires the use of sophisticated buyers (developed by using anonymous buyer profiles) communicating with sellers to influence them to lower prices. At this point, Applicant's representative yet again respectfully asked the examiner if he was aware of other specific citations in the Gershman patent that provided for such a limitation. The examiner yet again responded that he would have to re-read the Gershman patent to be able to see where such a limitation was mentioned.

e.   Applicant's representative reminded the examiner during the interview that it was the duty of the examiner to specifically point out limitations with respect to each and every claim

element such that applicant is aware of how the examiner is applying a reference in a rejection. Applicant's representative also indicated during the interview that applicant is unable to respond with specificity when ambiguous rejections are made based on mere assertions. At this point, an invitation was extended to the examiner to postpone the interview so he would have additional time to review the Gershman patent (to specifically point out limitations pertinent to various claim elements/steps). The invitation was declined, but the examiner encouraged applicant's representative to file a request for reconsideration with the arguments presented during the interview.

f.   Applicant's representative was appreciative of the interview and the opportunity to discuss prior art applicability and, as per examiner's recommendation, a request for reconsideration was filed on 02/02/04.

g.   Applicant would like to point out that an interview summary, as per USPTO guidelines, addressing the discussed issues was not received by the applicant.

h.   The examiner, in the office action mailed 03/01/04, issued an advisory action indicating that the request for reconsideration failed to place the application in condition for allowance. Applicant would like to point out that proper consideration was not given by the examiner with respect to issues (a)-(e) raised during the interview of 1/15/04, as there is no mention, in the advisory action, regarding any additional citations with respect to the Gershman patent.

II.   REJECTIONS UNDER 35 U.S.C. § 102(e)

Independent claims 1, 12, 21, and 27 were rejected under 102(e) as anticipated by Gershman et al. (USP 6,199,099). To be properly rejected under 35 USC §102, each and every element of the claims must be disclosed in a single cited reference. The applicant, however, contends that the presently claimed invention cannot be anticipated in view of the '099 reference.

Gershman et al. provides for a system, method, and an article of manufacture for obtaining information on a mobile computing environment (such as a thin client computer). Based upon Gershman's invention, a wireless phone or similar hand-held device with Internet Protocol capability is combined with other peripherals to provide a portable portal into the Internet. Gershman describes a service routine (that is used in conjunction with the hand-held device) that queries the Web utilizing a distributed communications network to find price,

shipping, and availability information from various Web suppliers. Any gathered information is then displayed in the hand-held device.

Regarding claims 1 and 27, examiner cites figure 9 (and associated text); column 28, line 64 - column 29, line 53; column 29, line 56 – column 30, line 27; and column 56, line 1 – column 57, line 11 ("shopper's eye") in support of his argument that Gershman provides for "one or more automated surveyors" for surveying a plurality of posted prices, bid process, posted quotes, quotes process, and auctions. A closer reading of the citations indicates that the Gershman reference merely provides for a module that receives, from a wireless device, data corresponding to a bar code on a book or other object. The module then contacts other third-party web sites to find price, shipping, and availability, wherein such information is then rendered to the user of the wireless device. Further, in column 29, line 65 - column 30, line 1, Gershman states that "each member owns and maintains his profile". This is in stark contrast with the applicant's invention that uses automated surveyors with an anonymous buyer profile.

Applicant also contends that the Gershman reference fails to disclose or even suggest an anonymous buyer profile representing a sophisticated buyer. Regarding independent claims 1 and 27, the examiner cites figures 12-14, column 32, line 7 – column33, line 50 in support of his argument that Gershman provides for the "anonymous buyer profile" limitation. A closer examination of the cited pages (and the patent in its entirety) suggests that the Gershman reference provides multiple personas for each user. For example, a single user can maintain a "work persona" and a "home persona". Figures 12-14 further re-emphasizes this point by showing how a user "David Smith" 1200 is able to maintain a work persona 1220, a home personal 1230 and a Tahoe persona 1240.

Applicant contends that the cited paragraphs and figures fail to disclose an anonymous buyer profile that is used multiple times to develop historical usage representing a sophisticated buyer. Applicant further contends that the cited paragraphs of the Gershman reference, in stark contrast, disclose a profile associated with a named (not anonymous) user, i.e., David Smith 1200. Hence, the profile of Gershman is user-specific. The anonymous buyer profile of the present invention on the other hand is built and developed by the system based upon historical usage, wherein, at a later point, various users are matched with appropriate buyer profiles (wherein the users are able to use appropriate profiles to purchase products anonymously). In

other words, the anonymous buyer profile of the claimed invention is not associated with a particular user.

Furthermore, regarding claim 12, the examiner contends that the Gershman reference provides the limitation of "indicating to sellers when they are competitive, and influencing them to lower prices". In support of his arguments, the examiner cites column 57, lines 4-7 of the Gershman patent. A closer examination of the cited paragraphs shows that the Gershman patent merely teaches negotiating "prices and service options with retailers". In other words, the shopping agent of Gershman is able to negotiate prices on behalf of a user. In stark contrast, the present invention's system and method teaches the development of a sophisticated buyer profile which is then used to inform sellers of lower prices quoted by competitors and advises them regarding why they should consider lowering their prices (i.e., influencing them to lower prices).

Regarding claims 7, 21, and 28, the examiner also contends that figures 15-16 and column 33, line 51 – column 34, line 42 provide for the limitation of "generating/choosing one of a plurality of available fictitious names". A close reading of the cited pages indicates that the Gershman patent merely provides for a statistical agent that keeps track of key statistics (frequency of login, frequency of rating of content such as news articles, and activity of agents). Applicant contends that the Gershman patent fails to teach the generation of fictitious names, as there is no explicit or implicit mention in the cited pages regarding such a limitation.

Regarding claim 9, the examiner cites figures 1A and 17, and associated text as support for the limitation of "potential buyers receiving messages of prices discovered by any of e-mail, regular mail, or faxes". Figure 1A of the Gershman reference discloses a mobile device that is able to access any of the following: web portal 14 (via Internet service provider (ISP) 12), communication infrastructure (phone company) 22, third party services 16, browser 20, and device manufacturer 18. Figure 17 discloses Gershman's detailed logic for accessing a profile associated with a user. Gershman uses a smart card example to further illustrate the logic behind figure 17. A consumer carrying a smart card holding a digital certificate checks into a hotel chain. When a hotel employee swipes the smart card and the consumer enters his/her PIN number, the hotel is given access to a part of the consumer's profile. Figures 1A and 17 fail to mention discovering prices. Furthermore, there is no explicit, implicit, or obvious suggestion in

the Gershman reference for potential buyers receiving any messages (via e-mail, regular mail, or faxes) concerning discovered prices.

As per claims 10 and 26, the examiner contends that the Gershman reference discloses the limitation of uncovering underlying fee structures and how such a fee structure varies with respect to different parameters. The examiner cites column 56, line 46 – column 57, line 3 as support for this limitation. A closer reading of the cited paragraphs suggests that agents enable a user to refine his/her preferences with respect to shopping. There is no teaching in the cited paragraphs regarding uncovering a fee structure, wherein such information is provided to potential buyers to save money.

With respect to claims 11 and 16, the examiner argues that the Gershman reference provides the limitations of claims 1 and 12 as implemented across any of the following networks: Internet, WWW, wireless web, LAN or WAN. Applicant's arguments with respect to claim 1 and 12 substantially apply for claims 11 and 16, therefore, applicant contends that dependent claims 11 and 16 cannot be anticipated by Gershman.

Hence, applicant contends that the examiner has failed to show how claims 1, 7, 9-12, 16, 21, and 26-28 are anticipated under 35 USC §102(e) by Gershman et al. (6,199,099) as the '099 reference fails to provide for many of the limitations of claims 1, 7, 9-12, 16, 21, and 26-28.

III.   REJECTIONS UNDER 35 U.S.C. § 103(a)

To establish a *prima facie* case of obviousness under U.S.C. § 103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure (In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

The examiner has rejected claims 5, 8, 13, 24-25 under 35 U.S.C. §103(a) as being unpatentable over Gershman. With regard to claim 5, applicant agrees with the examiner that the Gershman patent fails to explicitly disclose collecting information about wholesale prices; generating reference points; and assessing from said reference points whether a posted price is reasonable. Applicant, however, disagrees with the examiner that such a limitation would have been inherent in the software agents of Gershman. Column 56, line 33 – column 57, line 3 of the Gershman patent merely mentions that software agents can be used in shopping, wherein such agents allow the user to refine their preferences (which are used in shopping). Gershman's software agents fail to suggest or render obvious the following limitations: enhancing price discovery by collecting information about whole sale prices, generating reference points, and accessing, from the reference points, if the posted price is reasonable.

With respect to claims 8, 13, and 24, applicant agrees with the examiner that the Gershman reference does not disclose the limitations of: promoting competition among sellers by generating messages to inform sellers of lower prices quoted by competitors, advising the sellers to consider lowering prices, and maintaining a website for public viewing regarding ratings of sellers. Applicant, however, disagrees that the above-mentioned limitations are rendered obvious in view of the Gershman reference.

The examiner cites figures 16-18, associated text, column 34, lines 21-42, and column 57, lines 4-7 as support for the limitations of claims 8, 13, and 24. A closer reading of the citations however fails to suggest such limitations. Figure 16 of the Gershman reference merely describes the algorithm for determining personalized product ratings for a user. Figure 17 of the Gershman reference, as described earlier, teaches a detailed logic associated with different methods for accessing a user's profile. Figure 18 of the Gerhman reference details the interaction between a consumer and an integrator involving one supplier. With respect to column 57, lines 4-7 of the Gershman patent, the referenced citation merely teaches negotiating "prices and service options with retailers". In other words, the shopping agent of Gershman is able to negotiate prices on behalf of a user. In stark contrast, the present invention's system and method teaches the development of a sophisticated buyer profile which is then used to inform sellers of lower prices quoted by competitors and advises them regarding why they should consider lowering their prices (i.e., influencing them to lower prices). With respect to column 34, lines 21-42, the

Gershman patent merely teaches the retrieval of product ratings (as rated by other users who have previously used the product in question). Applicant contends that there is neither a suggestion nor a motivation, either in the Gershman reference or in the knowledge generally available to one of ordinary skill in the art, to modify the Gershman reference to teach or suggest many of the limitations of claims 8, 13, and 24.

Regarding claim 25, the examiner cites figures 1A and 17, and associated text as support for the limitation of potential buyers receiving messages of prices discovered by any of: e-mail, regular mail, or faxes. As mentioned earlier, figure 1A of the Gershman reference discloses a mobile device that is able to access any of the following: web portal 14 (via Internet service provider (ISP) 12), communication infrastructure (phone company) 22, third party services 16, browser 20, and device manufacturer 18. Figure 17 discloses Gershman's detailed logic for accessing a profile associated with a user. Gershman uses a smart card example to further illustrate the logic behind figure 17. A consumer carrying a smart card holding a digital certificate checks into a hotel chain. When a hotel employee swipes the smart card and the consumer enters his/her PIN number, the hotel is given access to a part of the consumer's profile. Figures 1A and 17 fail to mention discovering prices. Furthermore, there is no explicit, implicit, or obvious suggestion in the Gershman reference for potential buyers receiving any messages (via e-mail, regular mail, or faxes) concerning discovered prices.

The examiner rejects claims 3-4, 14-15, and 23 as being unpatentable over Gershman in view of Webvan (http://www.wired.com/news/business/0.1367.45098.00.html). The examiner specifically argues that it would have been obvious to have combined the features of the Gershman system/method with the services of Webvan. Applicant respectfully disagrees with the examiner. A closer reading of the Webvan reference suggests that the Webvan online service offers registered customers an opportunity to shop for groceries online. As shown in the arguments presented above, the examiner has failed to show how the Gershman patent provides for many limitations including the maintenance of an anonymous buyer profile and a sophisticated buyer using such a profile. Furthermore, there is no teaching in the Webvan reference for such limitations. Hence, applicant contends that it would have not been obvious for one of ordinary skill in the art to have combined Gershman and Webvan to account for the limitations of claims 3-4, 14-15, and 23.

The examiner rejects claim 6 of applicant's invention as being unpatentable over Gershman in view of MySimon (http://www.mysimon.com). MySimon provides for a website where users go to compare prices of products offered by a plurality of merchants. However, MySimon does not teach or suggest how such a site works in conjunction with a plurality of automated surveyors to maintain an anonymous profile representing a sophisticated buyer. Hence, applicant contends that it would have not been obvious for one of ordinary skill in the art to have combined Gershman and MySimon to account for the limitations of claim 6.

Hence, applicant contends that the examiner has failed to establish a *prima facie* case of obviousness under U.S.C. § 103, as there is no suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

SUMMARY

Applicant has shown that an interview summary, as per USPTO guidelines, addressing the discussed issues was not recorded by the examiner. Applicant has also shown that proper consideration was not given by the examiner with respect to issues (a)-(e) raised during the interview of 1/15/04 as there is no mention, in the advisory action, regarding any additional citations with respect to the Gershman patent.
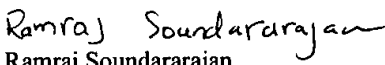
With respect to rejections under 35 USC §102(e), applicant has shown that the examiner has failed to show how claims 1, 7, 9-12, 16, 21, and 26-28 are anticipated by Gershman et al. (6,199,099), as the '099 reference fails to provide for many of the limitations of claims 1, 7, 9-12, 16, 21, and 26-28.

With respect to rejections under U.S.C. § 103, applicant has shown that the examiner has failed to establish a *prima facie* case of obviousness, as there is no suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

As has been detailed above, none of the references, cited or applied, provide for the specific claimed details of applicant's presently claimed invention, nor render them obvious. It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

As this Appeal Brief has been timely filed within the set period of response, no petition for extension of time or associated fee is required. However, the Commissioner is hereby authorized to charge any deficiencies in the fees provided, to include an extension of time, to Deposit Account No. 09-0441.

Respectfully submitted by
Applicant's Representative,

Ramraj Soundararajan
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Reg. No. 53,832

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Appendix:

1.   A system for enhancing price discovery of products available in electronic commerce, wherein said system comprises:

said system comprises:

one or more automated surveyors for surveying a plurality of: posted prices, bid prices, posted quotes, quoted prices, and auctions;

an anonymous buyer profile, said anonymous buyer profile used multiple times to develop historical usage therefore, said historical usage representing a sophisticated buyer and included within at least one of said one or more automated surveyors, said sophisticated buyer used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination.

3.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said developed anonymous buyer profile is used to make actual purchases for a buyer using said system without disclosing the true identity of said buyer.

4.   A system for enhancing price discovery in electronic commerce, as per claim 3, wherein when said system makes actual purchases for a buyer it further includes: receiving purchased at least one item at a site owned by system operator or a third party, and

shipping at least item to said buyer.

5.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said surveying posted prices further comprises:

collecting information about wholesale prices;

generating reference points, and

assessing from said reference points whether a posted price is reasonable.

6.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said surveying posted quotes further comprises:

        scanning continuously commercial sites on a network;

        extracting posted quotes from said sites;

        maintaining a database of posted quotes, and

        pointing a buyer to vendors that post a best price based on said posted quotes for an item the buyer is interested in.

7.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said

included within at least one of said one or more automated surveyors comprises:

        choosing one of a plurality of available fictitious names;

        requesting price quotes on behalf of said chosen fictitious names;

        storing all received quotes, and

        maintaining statistics about said stored received quotes for reference to future buyers using said system.

8.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said system further comprises:

        promoting competition among sellers by:

        generating messages to inform sellers of lower prices quoted by their competitors;

        advising said sellers to consider lowering prices, and

        maintaining a website, for public viewing, regarding ratings of sellers.

9.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein potential buyers receive messages of prices discovered by any of: e-mail, regular mail, or faxes.

10.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein said method of uncovering price structures further comprises:

probing a commercial site with varying parameters associated with the price of at least

one product;

uncovering the underlying fee structure and how it varies with respect to different

parameters, and

suggesting to a potential buyer what parameters can be changed to save money.

11.   A system for enhancing price discovery in electronic commerce, as per claim 1, wherein

said network includes any of the: Internet, WWW, wireless web, LAN or WAN.

12.   A method for enhancing buyers performance in electronic commerce, wherein said

method comprises:

electronically presenting information to sellers located across a network about

sophisticated buyers who are not willing to pay more than a minimum price, said sophisticated

buyers developed by historical use of anonymous buyer profiles;

using said sophisticated buyers to electronically gather information about prices on a

network, and

indicating to sellers when they are competitive, and influencing them to lower prices.

13.   A method for enhancing buyers performance in electronic commerce, as per claim 12,

wherein said influencing them to lower prices comprises any of:

generating messages to inform sellers of lower prices quoted by their competitors;

advising said sellers to consider lowering prices, and

maintaining a website, for public viewing, regarding ratings of sellers.

14.   A method for enhancing buyers performance in electronic commerce, as per claim 12,

wherein said sophisticated buyers are used to anonymously make actual purchases for a buyer

using said method.

15.   A method for enhancing buyers performance in electronic commerce, as per claim 14,

wherein when said method anonymously makes actual purchases for a buyer it further includes:

receiving purchased item(s) at a site owned by system operator or a third party, and

    shipping item(s) to said buyer.

16.   A method for enhancing buyers performance in electronic commerce, according to claim

12, wherein said network includes one of the: Internet, WWW, wireless web, LAN or WAN.

21.   A method for enhancing buyers performance in electronic commerce comprising:

    surveying quoted prices located across a network, comprising the steps of:

    generating fictitious user names;

    requesting price quotes using said fictitious name(s);

    building reputation of said fictitious name(s) as sophisticated buyer(s);

    continuously scanning commercial sites on a network using said sophisticated buyers to

retrieve product price information, including at least quotes;

    generating statistical distribution of said quotes, and

    comparing a quote a known buyer receives to what has been observed in the system by

the sophisticated buyer.

23.   A method for enhancing buyers performance in electronic commerce, according to claim

21, wherein said known buyer's anonymity is protected comprises the steps of:

    providing buyer the option of purchasing item(s) for him;

    purchasing the item(s) using one of many said available fictitious names;

    receiving item(s) at a site owned by system operator, and

    shipping item(s) to buyer.

24.   A method for enhancing buyers performance in electronic commerce, according to claim

21, further comprising promoting competition among sellers comprising the steps of:

    generating messages to inform sellers of lower prices quoted by their competitors;

advising said sellers to consider lowering prices, and

maintaining a website, for public viewing, regarding ratings of sellers.

25.   A method for enhancing buyers performance in electronic commerce, according to claim

24, wherein said messages generated include one of the following: e-mail, regular mail, or faxes.

26.   A method for enhancing buyers performance in electronic commerce, according to claim

21, further comprising a method of uncovering price structures by:

probing a commercial site with varying parameters associated with the price of at least

one product;

uncovering the underlying fee structure and how it varies with respect to different

parameters, and

suggesting to the buyer what parameters can be changed to save money.

27.   An article of manufacture comprising a computer user medium having computer readable

program code embodied therein which enhances buyers performance in electronic commerce,

said system comprising:

computer readable code comprising one or more automated surveyors for surveying any

of: posted prices, bid prices, posted quotes, quoted prices, and auctions;

computer readable code comprising an anonymous buyer profile used multiple times to

develop historical usage therefore, said historical usage representing a sophisticated buyer and

included within at least one of said one or more automated surveyors, said sophisticated buyer

used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the

best prices in an electronic commerce environment which includes electronic price

discrimination.

28. An article of manufacture comprising a computer user medium having computer readable

program code embodied therein which enhances buyers performance in electronic commerce,

according to claim 27, wherein code for said automated surveyors using said one or more

anonymous buyer profiles further comprises computer code for:

concealing a buyers true identity;

picking one of many available fictitious names;

requesting price quotes on behalf of a buyer without revealing the buyer's true identity;

storing all received quotes, and

maintaining statistics about said stored received quotes for reference of future buyers.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/634,546
Filing Date	8/08/2000
First Named Inventor	Megiddo, Nimrod
Art Unit	3621
Examiner Name	David Le

Total Number of Pages in This Submission		Attorney Docket Number
		AM9-99-0239

ENCLOSURES *(check all that apply)*

[X] Fee Transmittal Form	[ ] Drawing(s)	[ ] After Allowance communication to Group
[ ] Fee Attached	[ ] Licensing-related Papers	[ ] Appeal Communication to Board of Appeals and Interferences
[ ] Amendment / Reply	[ ] Petition	[X] Appeal Communication to Group **(Appeal Notice, Brief, Reply Brief)**
[ ] After Final	[ ] Petition to Convert to a Provisional Application	[ ] Proprietary Information
[ ] Affidavits/declaration(s)	[ ] Power of Attorney, Revocation Change of Correspondence Address	[ ] Status Letter
[ ] Extension of Time Request	[ ] Terminal Disclaimer	[ ] Other Enclosure(s) (please identify below):
[ ] Express Abandonment Request	[ ] Request for Refund	
[ ] Information Disclosure Statement	[ ] CD, Number of CD(s) _____	
[ ] Certified Copy of Priority Document(s)	Remarks	
[ ] Response to Missing Parts/ Incomplete Application		
[ ] Response to Missing Parts under 37 CFR 1.52 or 1.53		

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Lacasse & Associates, LLC
Signature	Ramraj Soundararajan
Date	May 3, 2004

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Signature		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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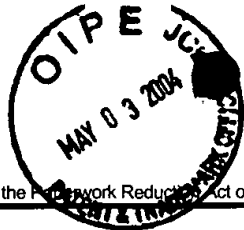
FEE TRANSMITTAL
for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant Claims small entity status. See 37 CFR 1.27

Complete if Known	
Application Number	09/634,546
Filing Date	8/08/2000
First Named Inventor	Megiddo
Examiner Name	David Le
Art Unit	3621
Attorney Docket No.	AM9-99-0239

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MAY 6 - 2004
GROUP 3600

TOTAL AMOUNT OF PAYMENT | ($) 330.00

METHOD OF PAYMENT *(check all that apply)*

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account

Deposit Account Number: 09-0441

Deposit Account Name: IBM CORPORATION

The Director is authorized to: *(check all that apply)*
☒ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) or any underpayment of fee(s)
☐ Charge fee(s) indicated below, except for the filing fee

to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee ($)	Fee Code	Fee ($)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) | ($) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims		Fee from below		Fee Paid
Total Claims		-20**=		X	=	
Independent Claims		- 3**=		X	=	
Multiple Dependent				=	

Large Entity		Small Entity		Fee Description
Fee Code	Fee ($)	Fee Code	Fee ($)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) | ($) 0

*** or number previously paid, if greater; For Reissues, see above*

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee ($)	Fee Code	Fee ($)		
1051	130	2051	65	Surcharge – late filing fee or oath	
1052	50	2052	25	Surcharge – late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for *ex parte* reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive – unavoidable	
1453	1,330	2453	665	Petition to revive – unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) | ($) 330

SUBMITTED BY

				Complete *(if applicable)*	
Name *(Print/Type)*	Ramraj Soundararajan	Registration No. *(Attorney/Agent)*	53832	Telephone	(703) 838-7683
Signature	*Ramraj Soundararajan*			Date	5/3/2004

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